

MONTANA LEGISLATIVE HISTORY

Chapter 514 1997

Bill H 129 S _____ Original bill & history ☒ c

H. Committee on Human Services

Hearing Date(s) 1-13 ☒ c

2-14 ☒ c

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Date Out _____ c

S. Committee on Public Health...

Hearing Date(s) 3-17 ☒ c

3-21 ☒ c

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Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendant information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

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HOUSE BILL NO. 129

INTRODUCED BY SOFT

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAW RELATING TO CHILD PROTECTIVE SERVICES; CLARIFYING DEFINITIONS; PROVIDING THAT THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES MAY NOT BE ORDERED TO SUPERVISE VISITATION; LIMITING THE REQUIREMENT FOR FOSTER CARE LICENSING; AMENDING SECTIONS 40-4-218, 40-8-111, 41-3-102, 41-3-201, 41-3-202, 41-3-204, 41-3-205, 41-3-609, 41-3-1102, 41-3-1141, AND 41-3-1142, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 40-4-218, MCA, is amended to read:

"40-4-218. Judicial supervision. (1) Except as otherwise agreed by the parties in writing at the time of the custody decree, the custodian may determine the child's upbringing, including the child's education, health care, and religious training, unless the court after hearing finds, upon motion by the noncustodial parent, that in the absence of a specific limitation of the custodian's authority, the child's physical health would be endangered or the child's emotional development significantly impaired.

(2) If both parents or all contestants agree to the order or if the court finds that in the absence of the order the child's physical health would be endangered or the child's emotional development significantly impaired, the court may order the supervised visitation by the noncustodial parent. The court may not order the department of public health and human services to exercise continuing supervision over the case to assure that the custodial or visitation terms of the decree are carried out to supervise the visitation."

Section 2. Section 40-8-111, MCA, is amended to read:

"40-8-111. Consent required for adoption. (1) An adoption of a child may be decreed when there have been filed written consents to adoption executed by:

(a) both parents, if living, or the surviving parent of a child, provided that consent is not required from a father or mother:

(i) adjudged guilty by a court of competent jurisdiction of assault on a child, as provided in 45-5-201; sexual assault on a child, as provided in 45-5-502; sexual intercourse without consent, as provided in 45-5-503, if the victim was a child; incest, as provided in 45-5-507, if the victim was a child; endangering the welfare of children, concerning a child, as provided in 45-5-622; sexual abuse of children, toward a child, as provided in 45-5-625; or ritual abuse of a minor, as provided in 45-5-627;

(ii) who has been judicially deprived of the custody of the child on account of cruelty or neglect toward the child;

(iii) who has, in the state of Montana or in any other state of the United States, willfully abandoned the child, as defined in ~~41-3-102(7)(e)~~ 41-3-102;

(iv) who has caused the child to be maintained by any public or private children's institution, any charitable agency, or any licensed adoption agency or the department of public health and human services of the state of Montana for a period of 1 year without contributing to the support of the child during that period, if able;

(v) if it is proved to the satisfaction of the court that the father or mother, if able, has not contributed to the support of the child during a period of 1 year before the filing of a petition for adoption; or

(vi) whose parental rights have been judicially terminated;

(b) the legal guardian of the child if both parents are dead or if the rights of the parents have been terminated by judicial proceedings and the guardian has authority by order of the court appointing the guardian to consent to the adoption;

(c) the executive head of an agency if the child has been relinquished for adoption to the agency or if the rights of the parents have been judicially terminated or if both parents are dead and custody of the child has been legally vested in the agency with authority to consent to adoption of the child; or

(d) any person having legal custody of a child by court order if the parental rights of the parents have been judicially terminated. In that case, the court having jurisdiction of the custody of the child shall consent to adoption and a certified copy of its order must be attached to the petition.

(2) The consents required by subsections (1)(a) and (1)(b) must be acknowledged before an officer authorized to take acknowledgments or witnessed by a representative of the department of public health and human services or of an agency or witnessed by a representative of the court."

1 **Section 3.** Section 41-3-102, MCA, is amended to read:

2 **"41-3-102. Definitions.** As used in this chapter, the following definitions apply:

3 (1) "A person responsible for a child's welfare" means:

4 (a) the child's parent, guardian, ~~or~~ foster parent or an adult who resides in the same home in which
5 the child resides;

6 (b) a ~~staff~~ person providing care in a day-care facility;

7 (c) an employee of a public or private residential institution, facility, home, or agency; or

8 (d) any other person ~~legally~~ responsible for the child's welfare in a residential setting.

9 (2) "Abused or neglected" means the state or condition of a child who has suffered child abuse
10 or neglect.

11 (3) (a) "Adequate health care" means any medical care, including the prevention of the withholding
12 of medically indicated treatment or medically indicated psychological care permitted or authorized under
13 state law.

14 (b) This chapter may not be construed to require or justify a finding of child abuse or neglect for
15 the sole reason that a parent, due to religious beliefs, does not provide medical care for a child. However,
16 this chapter may not be construed to limit the administrative or judicial authority of the state to ensure that
17 medical care is provided to the child when there is imminent or substantial risk of harm to the child.

18 (c) The term does not include self-defense, defense of others, or action taken to prevent the child
19 from self-harm that does not constitute harm to a child's health or welfare.

20 (4) "Child" or "youth" means any person under 18 years of age.

21 (5) (a) "Child abuse or neglect" means:

22 (i) harm to a child's health or welfare; or

23 (ii) threatened harm to a child's health or welfare.

24 (b) The term includes harm or threatened harm to a child's health or welfare by the acts or
25 omissions of a person responsible for the child's welfare.

26 (6) "Department" means the department of public health and human services provided for in
27 2-15-2201.

28 (7) "Emotional abuse" means injury to the emotional well-being or intellectual or psychological
29 capacity of a child, as evidenced by an identifiable and substantial impairment of or adverse effect upon
30 a child's physical, mental, or emotional ability to function.

1 ~~(7)~~(8) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or
2 other person responsible for the child's welfare:

3 (a) inflicts or allows to be inflicted upon the child physical or ~~mental injury~~ emotional abuse;

4 (b) commits or allows to be committed sexual abuse or exploitation of the child;

5 (c) induces or attempts to induce a child into giving untrue testimony that the child or another child
6 was abused or neglected by a parent or person responsible for the child's welfare;

7 (d) causes malnutrition or failure to thrive or otherwise fails to supply the child with adequate food
8 or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or
9 offered financial or other reasonable means to do so;

10 (e) exposes or allows the child to be exposed to an unreasonable risk to the child's health or
11 welfare by failing to intervene or eliminate the risk;

12 ~~(f)~~(f) abandons the child by leaving the child under circumstances that make reasonable the belief
13 that the parent or other person does not intend to resume care of the child in the future or willfully
14 surrenders physical custody for a period of 6 months and during that period does not manifest to the child
15 and the person having physical custody of the child a firm intention to resume physical custody or to make
16 permanent legal arrangements for the care of the child; or

17 ~~(g)~~(g) is unknown and has been unknown for a period of 90 days and reasonable efforts to identify
18 and locate the parents have failed.

19 ~~(8)~~(9) "Limited emancipation" means a status conferred on a youth by a court after a dispositional
20 hearing in accordance with 41-3-406 under which the youth is entitled to exercise some but not all of the
21 rights and responsibilities of a person who is 18 years of age or older.

22 ~~(9) "Mental injury" means an identifiable and substantial impairment of the child's intellectual or~~
23 ~~psychological functioning.~~

24 (10) "Parent" means a biological or adoptive parent ~~or stepparent~~.

25 (11) "Physical injury" abuse" means death, substantial or multiple skin bruising or any other internal
26 bleeding, any injury to skin that causes bleeding or soft tissue swelling, subdural hematoma, burns, bone
27 fractures, extreme pain, permanent or temporary disfigurement, or impairment of any bodily organ or
28 function, or death if the injury or death is not accidental or is not justifiably explained. The term includes
29 death, permanent or temporary disfigurement, and impairment of a bodily organ or function sustained as
30 a result of excessive corporal punishment.

1 (12) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe
2 that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances
3 known to the person.

4 (13) "Residential setting" means an out-of-home placement where the child typically resides for
5 longer than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary,
6 treatment.

7 ~~(12)~~(14) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without
8 consent, indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5.

9 (b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area
10 while attending to the sanitary or health care needs of that infant or toddler by a parent.

11 ~~(13)~~(15) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a
12 prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging
13 sexual abuse of children as described in 45-5-625.

14 ~~(14)~~(16) "Social worker" means an employee of the department who, prior to the employee's field
15 assignment, has been educated or trained or is receiving education or training in a program of social work
16 or a related field that includes cognitive and family systems treatment or who has equivalent verified
17 experience or verified training in the investigation of child abuse, neglect, and endangerment. This definition
18 does not apply to any provision of this code that is not in this chapter.

19 ~~(15)~~(17) "Threatened harm to a child's health or welfare" means substantial risk of harm to the
20 child's health or welfare.

21 ~~(16)~~(18) (a) "Withholding of medically indicated treatment" means the failure to respond to an
22 infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and
23 medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely
24 to be effective in ameliorating or correcting the conditions.

25 (b) The term does not include the failure to provide treatment, other than appropriate nutrition,
26 hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical
27 judgment:

28 (i) the infant is chronically and irreversibly comatose;

29 (ii) the provision of treatment would:

30 (A) merely prolong dying;

(B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(C) otherwise be futile in terms of the survival of the infant; or

(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection ~~(16)~~ (18), "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children over 1 year of age.

~~(17)~~ (19) "Youth in need of care" means a youth who is abused or neglected."

Section 4. Section 41-3-201, MCA, is amended to read:

"41-3-201. Reports. (1) When the professionals and officials listed in subsection (2) know or have reasonable cause to suspect, as a result of information they receive in their professional or official capacity, that a child is abused or neglected, they shall report the matter promptly to the department of public health and human services or its local affiliate, ~~which then shall notify the county attorney of the county where the child resides.~~

(2) Professionals and officials required to report are:

(a) physician, resident, intern, or member of a hospital's staff engaged in the admission, examination, care, or treatment of persons;

(b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist, or any other health or mental health professional;

(c) Christian Science practitioner and religious healers;

(d) school teachers, other school officials, and employees who work during regular school hours;

(e) a social worker, operator or employee of any registered or licensed day-care or substitute care facility, staff of a resource and referral grant program organized under 52-2-711 or of a child and adult food care program, or ~~any other~~ an operator or employee of a child-care facility;

(f) foster care, residential, or institutional worker;

(g) a peace officer or other law enforcement official;

(h) clergy; or

1 (i) a guardian ad litem or a court-appointed advocate who is authorized to investigate a report of
2 alleged abuse or neglect.

3 (3) Any person may make a report under this section if the person knows or has reasonable cause
4 to suspect that a child is abused or neglected.

5 (4) (a) Except as provided in subsection (4)(b) or (4)(c), a person listed in subsection (2) may not
6 refuse to make a report as required in this section on the grounds of a physician-patient or similar privilege.

7 (b) A clergyperson or priest is not required to make a report under this section if:

8 (i) the knowledge or suspicion of the abuse or neglect came from a statement or confession made
9 to the clergyperson or priest in that person's capacity as a clergyperson or priest;

10 (ii) the statement was intended to be a part of a confidential communication between the
11 clergyperson or priest and a member of the clergyperson's or priest's church or congregation; and

12 (iii) the person who made the statement or confession does not consent to the disclosure by the
13 clergyperson or priest.

14 (c) A clergyperson or priest is not required to make a report under this section if the communication
15 is required to be confidential by canon law, church doctrine, or established church practice.

16 (5) The reports referred to under this section must contain:

17 (a) the names and addresses of the child and the child's parents or other persons responsible for
18 the child's care;

19 (b) to the extent known, the child's age and the nature and extent of the child's injuries, including
20 any evidence of previous injuries;

21 (c) any other information that the maker of the report believes might be helpful in establishing the
22 cause of the injuries or showing the willful neglect and the identity of person or persons responsible for the
23 injury or neglect; and

24 (d) the facts that led the person reporting to believe that the child has suffered injury or injuries
25 or willful neglect, within the meaning of this chapter."

26
27 **Section 5.** Section 41-3-202, MCA, is amended to read:

28 **"41-3-202. Action on reporting.** (1) Upon receipt of a report, as required by 41-3-201, that a child
29 is or has been abused or neglected, a social worker, the county attorney, or a peace officer shall promptly
30 conduct a thorough investigation into the circumstances surrounding the allegations of abuse or neglect

1 of the child, which may include an investigation at the home of the child involved, the child's school or
2 day-care facility, or any other place where the child is present, into the circumstances surrounding the injury
3 of the child, and into all other nonfinancial matters that in the discretion of the investigator are relevant to
4 the investigation. In conducting an investigation under this section, a social worker may not inquire into
5 the financial status of the child's family or of any other person responsible for the child's care, except as
6 necessary to ascertain eligibility for state or federal assistance programs or to comply with the provisions
7 of 41-3-406.

8 (2) An initial investigation ~~into the home of the child of alleged abuse or neglect~~ may be conducted
9 when an anonymous report is received. However, the investigation must within 48 hours develop
10 independent, corroborative, and attributable information in order for the investigation to continue. Without
11 the development of independent, corroborative, and attributable information, a child may not be removed
12 from the home.

13 (3) The social worker is responsible for assessing the family and planning for the child. If the child
14 is treated at a medical facility, the social worker, county attorney, or peace officer, consistent with
15 reasonable medical practice, has the right of access to the child for interviews, photographs, and securing
16 physical evidence and has the right of access to relevant hospital and medical records pertaining to the
17 child. If considered appropriate by the social worker, county attorney, or peace officer conducting an
18 interview of the child, an employee of the ~~public~~ school attended by the child involved may participate in
19 any interview of the child ~~if the child is enrolled in kindergarten through 8th grade.~~

20 (4) If the child's interview is videotaped, an unedited videotape with audio track must be made
21 available, upon request, for unencumbered review by the family.

22 (5) (a) If from the investigation ~~it appears~~ the department has reasonable cause to suspect that the
23 child suffered abuse or neglect, the department ~~shall~~ may provide protective services to the child pursuant
24 to 41-3-301 and may provide protective services to any other child under the same care. The department
25 shall ~~advise the county attorney and;~~

26 (i) document its determination regarding abuse or neglect of a child; and

27 (ii) notify the child's family of its investigation and determination, unless the notification can
28 reasonably be expected to result in harm to the child or other person.

29 (b) If from the investigation ~~it appears~~ is determined that the child has not suffered abuse or neglect
30 and the initial report is determined to be unfounded, the department shall destroy all of its records

1 concerning the report and the investigation. The destruction must be completed within ~~20~~ 30 days of the
2 determination that the child has not suffered abuse or neglect.

3 (6) The investigating social worker, within 60 days of commencing an investigation, shall also
4 furnish a written report to the department and, upon request, to the family. Subject to subsection (5)(b),
5 the department shall maintain a record system ~~containing~~ documenting investigations and determinations
6 of child abuse and neglect cases.

7 (7) Any person reporting abuse or neglect that involves acts or omissions on the part of a public
8 or private residential institution, home, facility, or agency is responsible for ensuring that the report is made
9 to the department, through its local affiliate, ~~and the county attorney of the county in which the facility is~~
10 ~~located~~ office."

11
12 **Section 6.** Section 41-3-204, MCA, is amended to read:

13 **"41-3-204. Admissibility and preservation of evidence.** (1) In any proceeding resulting from a
14 report made pursuant to the provisions of this chapter or in any proceeding for which the report or its
15 contents are sought to be introduced into evidence, the report or its contents or any other fact related to
16 the report or to the condition of the child who is the subject of the report may not be excluded on the
17 ground that the matter is or may be the subject of a privilege related to the examination or treatment of the
18 child and granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by 26-1-803.

19 (2) Any person or official required to report under 41-3-201 may take or cause to be taken
20 photographs of the area of trauma visible on a child who is the subject of a report. The cost of photographs
21 taken under this section must be paid by the department.

22 (3) When any person required to report under 41-3-201 finds visible evidence that a child has
23 suffered abuse or neglect, the person shall include in the report either a written description or photographs
24 of the evidence.

25 (4) A physician, either in the course of providing medical care to a minor or after consultation with
26 child protective services, the county attorney, or a law enforcement officer, may require x-rays to be taken
27 when, in the physician's professional opinion, there is a need for radiological evidence of suspected abuse
28 or neglect. X-rays may be taken under this section without the permission of the parent or guardian. The
29 cost of the x-rays ordered and taken under this section must be paid by the county child protective service
30 agency.

(5) All written, photographic, or radiological evidence gathered under this section must be sent to the local affiliate of the department at the time that the written confirmation report is sent or as soon after the report is sent as is possible. If a confirmation report is not made, the evidence and the initial report must be destroyed as provided in ~~41-3-202(3)(b)~~ 41-3-202."

Section 7. Section 41-3-205, MCA, is amended to read:

"41-3-205. Confidentiality -- disclosure exceptions. (1) The case records of the department of public health and human services and its local affiliate, the county welfare department, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in subsections (4) and (5), a person who permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records may also be disclosed to the following persons or entities in this state and any other state or country:

(a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records or to a person authorized by the department to receive relevant information for the purpose of determining the best interests of a child with respect to an adoptive placement;

(c) a health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

- 1 (e) a child named in the records who was allegedly abused or neglected or the child's legal guardian
2 or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed
3 by the court to represent a child in a pending case;
- 4 (f) the state protection and advocacy program as authorized by 42 U.S.C. 6042(a)(2)(B);
- 5 (g) approved foster and adoptive parents who are or ~~will~~ may be providing care for a child;
- 6 (h) a person about whom a report has been made and that person's attorney, with respect to the
7 relevant records pertaining to that person only and without disclosing the identity of the reporter or any
8 other person whose safety may be endangered;
- 9 (i) an agency, including a probation or parole agency, that is legally responsible for the supervision
10 of an alleged perpetrator of child abuse or neglect;
- 11 (j) a person, agency, or organization that is engaged in a bona fide research or evaluation project
12 and that is authorized by the department to conduct the research or evaluation;
- 13 (k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a
14 family group conference for the purposes of assessing the needs of the child and family, formulating a
15 treatment plan, and monitoring the plan;
- 16 (l) the coroner or medical examiner when determining the cause of death of a child;
- 17 (m) a child fatality review team recognized by the department;
- 18 (n) a department or agency investigating an applicant for a license or registration that is required
19 to operate a youth care facility, day-care facility, or child-placing agency;
- 20 (o) a person or entity who is carrying out background, employment-related, or volunteer-related
21 screening of current or prospective employees or volunteers who have or may have unsupervised contact
22 with children through employment or volunteer activities. A request for information under this subsection
23 (3)(o) must be made in writing. Disclosure under this subsection (3)(o) is limited to information that
24 indicates a risk to children, persons with developmental disabilities, or older persons posed by the person
25 about whom the information is sought, as determined by the department.
- 26 (p) the news media if disclosure is limited to confirmation of factual information regarding how the
27 case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or
28 guardian as determined by the department;
- 29 (q) an employee of the department or other state agency if disclosure of the records is necessary
30 for administration of programs designed to benefit the child;

(r) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(s) a youth probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(t) a county attorney, peace officer, or attorney who is hired by or represents the department, if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

(u) a foster care review committee established under 41-3-1115 or, when applicable, a local citizen review board established under Title 41, chapter 3, part 10;

(v) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer as provided in 41-3-202;

(w) a member of a county interdisciplinary child information team formed under the provisions of 52-2-211;

(x) members of a local interagency staffing group provided for in 52-2-203; or

(y) a member of a youth placement committee formed under the provisions of 41-5-525.

(4) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsection (3)(a). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

(5) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member under subsection (4) if the news organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

(6) This section is not intended to affect the confidentiality of criminal court records or records of law enforcement agencies."

Section 8. Section 41-3-609, MCA, is amended to read:

"41-3-609. Criteria for termination. (1) The court may order a termination of the parent-child legal relationship upon a finding that any of the following circumstances exist:

(a) the parents have relinquished the child pursuant to 40-6-135;

(b) the child has been abandoned by the parents as set forth in ~~41-3-102(7)(c)~~ 41-3-102;

(c) the child is an adjudicated youth in need of care and both of the following exist:

(i) an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful; and

(ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time; or

(d) the parent has failed to successfully complete a treatment plan approved by the court within the time periods allowed for the child to be in foster care under 41-3-410 unless it orders other permanent legal custody under 41-3-410.

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court must enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental care. In making the determinations, the court shall consider but is not limited to the following:

(a) emotional illness, mental illness, or mental deficiency of the parent of such duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;

(b) a history of violent behavior by the parent;

(c) a single incident of life-threatening or gravely disabling injury to or disfigurement of ~~the~~ a child caused by the parent;

(d) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child;

(e) present judicially ordered long-term confinement of the parent;

(f) the injury or death of a ~~sibling child~~ due to because of proven parental abuse or neglect; and

(g) any reasonable efforts by protective service agencies that have been unable to rehabilitate the parent.

(3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child. The court shall review and, if necessary, order an evaluation of the child's or the parent's physical, mental, and emotional conditions.

(4) A treatment plan is not required under this part upon a finding by the court following hearing if:

(a) two medical doctors or clinical psychologists submit testimony that the parent ~~is so severely mentally ill that the parent~~ cannot assume the role of parent;

(b) the parent is incarcerated for more than 1 year and a treatment plan is not practical considering the incarceration; or

(c) the death of a ~~sibling~~ child caused by abuse or neglect by the parent has occurred.

(5) If a person is convicted of a felony in which sexual intercourse occurred or if a minor is adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse occurred and, as a result of the sexual intercourse, a child is born, the court may terminate the offender's parental rights to the child at any time after the conviction or adjudication."

Section 9. Section 41-3-1102, MCA, is amended to read:

"41-3-1102. Definitions. For the purposes of this part, the following definitions apply:

(1) "Child-care agency" means a youth care facility in which substitute care is provided to 13 or more children or youth.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Foster child" means a person under 18 years of age who has been placed by the department in a ~~licensed youth foster home~~ care facility.

~~(4) "Operator of a youth care facility" means a person owning or operating a youth care facility into which the operator takes any child or children for the purpose of caring for them and maintaining them and for which care and maintenance the operator receives money or other consideration of value and which child is neither the operator's son, daughter, nor ward, except that this part does not apply when any person accepts the care and custody of a child on a temporary basis and simply as a temporary accommodation for the parent or parents, guardian, or relative of the child.~~

~~(5)~~ (4) "Person" means any individual, partnership, voluntary association, or corporation.

~~(6)~~ (5) "Respite care" means the provision of temporary, short-term supervision or care of a foster child, in an emergency or on an intermittent basis, to provide foster parents relief from the daily care requirements of a foster child whose mental or physical condition requires special or intensive supervision

1 or care. Respite care includes but is not limited to homemaker services, child care, and emergency care
2 either in the home or out of the home.

3 ~~(7)~~(6) "Respite care provider" means a person who meets the qualifications and requirements
4 established by the department to provide respite care under 41-3-1151.

5 ~~(8)~~(7) "Substitute care" means full-time care of a youth in a residential setting for the purpose of
6 providing food, shelter, security and safety, guidance, direction, and if necessary, treatment to youth who
7 are removed from or without the care and supervision of their parents or guardian who is placed by the
8 department, another state agency, or a licensed child-placing agency and who has been determined by a
9 court to be a youth in need of care, youth in need of supervision, or delinquent youth. Individuals who
10 provide care to youth who are recipients of services provided through the department's developmental
11 disabilities, mental health, or medicaid community services program are also considered to be providing
12 substitute care. This part does not apply when a person accepts the care and custody of a child on a
13 temporary basis as an accommodation for the parent or parents, guardian, or relative of the child.

14 ~~(9)~~(8) "Youth care facility" means a facility licensed by the department or by the appropriate
15 licensing authority in another state and in which facility substitute care is provided to youth. The term
16 includes youth foster homes, youth group homes, and child-care agencies.

17 ~~(10)~~(9) "Youth foster home" means a youth care facility in which substitute care is provided to one
18 to six children or youth other than the foster parents' own children, stepchildren, or wards.

19 ~~(11)~~(10) "Youth group home" means a youth care facility in which substitute care is provided to
20 7 to 12 children or youth."

21
22 **Section 10.** Section 41-3-1141, MCA, is amended to read:

23 **"41-3-1141. License required.** ~~No~~ (1) A person shall may not maintain or operate a youth care
24 facility for any child or children within the meaning of this part without first securing a license ~~in writing~~
25 from the department.

26 (2) An extended family member or a kinship care provider, as defined by the department, who
27 provides unlicensed care for a child placed by the department must receive approval in writing from the
28 department.

29 (3) ~~No~~ The department may not charge a fee shall be charged for such a license or approval
30 granted under this section."

Section 11. Section 41-3-1142, MCA, is amended to read:

"41-3-1142. Issuance of license -- authority of issuing agency -- rules. (1) The department is hereby authorized to may issue licenses to persons operating youth care facilities or grant approval to persons providing kinship care and to prescribe the conditions upon which such licenses shall and approvals may be issued, and to The department may make such rules as it may deem advisable necessary for the licensure or approval, operation, and regulation of such those facilities for minor children consistent with the welfare of such children the residents.

(2) ~~Such licensing agency shall have the power and authority to~~ The department may inspect all
~~such licensed facilities through its duly authorized representatives and to cancel~~ or approved homes and,
~~as appropriate, undertake action, including but not limited to the revocation of licenses theretofore issued~~
~~for the failure to observe such rules and approvals.~~

(3) ~~The person operating such homes providing care in the facilities or homes shall give to such representative such~~ the department any information as that may be required and afford ~~him~~ the department every reasonable opportunity for observing the operation of ~~such~~ the facilities or homes."

NEW SECTION. Section 12. Effective date. [This act] is effective on passage and approval.

-END-

2/14 TABLED IN COMMITTEE
 2/27 MISSED DEADLINE FOR 45TH DAY TRANSMITTAL
 DIED IN COMMITTEE

HB 129 INTRODUCED BY SOFT *LC0352 DRAFTER: LANE*

REVISE THE LAW RELATING TO CHILD PROTECTIVE SERVICES
 BY REQUEST OF DEPARTMENT OF PUBLIC HEALTH & HUMAN SERVICES

12/30	INTRODUCED		
1/06	FIRST READING		
1/06	REFERRED TO HUMAN SERVICES & AGING		
1/13	HEARING		
2/19	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/22	2ND READING PASSED AS AMENDED	93	6
2/26	3RD READING PASSED	91	9
	TRANSMITTED TO SENATE		
3/03	FIRST READING		
3/03	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
3/17	HEARING		
3/24	COMMITTEE REPORT—BILL CONCURRED		
4/04	2ND READING CONCURRED AS AMENDED	49	0
4/05	3RD READING CONCURRED	49	1
	RETURNED TO HOUSE WITH AMENDMENTS		
4/12	2ND READING AMENDMENTS CONCURRED	88	5
4/14	3RD READING CONCURRED AS AMENDED	91	9
4/20	SIGNED BY SPEAKER		
4/24	SIGNED BY PRESIDENT		
4/25	TRANSMITTED TO GOVERNOR		
5/02	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 514		
	EFFECTIVE DATE: 05/02/97		

HB 130 INTRODUCED BY M. HANSON *LC0648 DRAFTER: BOHYER*

SPECIFYING THAT THE SALARY OF CERTAIN COUNTY OFFICIALS MAY NOT
 BE REDUCED AS A RESULT OF A RECLASSIFICATION OF THE COUNTY
 THAT THE OFFICIAL SERVES

12/30 INTRODUCED
 1/03 FISCAL NOTE REQUESTED
 1/06 FIRST READING
 1/06 REFERRED TO LOCAL GOVERNMENT
 1/13 FISCAL NOTE RECEIVED
 1/13 FISCAL NOTE PRINTED
 1/14 HEARING
 1/16 TABLED IN COMMITTEE
 2/27 MISSED DEADLINE FOR 45TH DAY TRANSMITTAL
 DIED IN COMMITTEE

HB 131 INTRODUCED BY SIMON *LC0392 DRAFTER: CAMPBELL*

REVISE STATE INSURANCE LAWS
 BY REQUEST OF STATE AUDITOR

12/30 INTRODUCED
 1/03 FISCAL NOTE REQUESTED
 1/06 FIRST READING
 1/06 REFERRED TO BUSINESS & LABOR
 1/10 FISCAL NOTE RECEIVED
 1/11 FISCAL NOTE PRINTED
 1/14 HEARING

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON HUMAN SERVICES

Call to Order: By Chairman Duane Grimes, on January 13, 1997, at 3:00 p.m., in room 104.

ROLL CALL

Members Present:

Rep. Duane Grimes, Chairman (R)
Rep. Loren L. Soft, Vice Chairman (Majority) (R)
Rep. Carolyn M. Squires, Vice Chairman (Minority) (D)
Rep. Darrel Adams (R)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. John C. Bohlinger (R)
Rep. Bill Carey (D)
Rep. Deb Kottel (D)
Rep. Billie Krenzler (D)
Rep. Brad Molnar (R)
Rep. Wes Prouse (R)
Rep. Diane Sands (D)
Rep. Bruce T. Simon (R)
Rep. Liz Smith (R)

Members Excused: None

Members Absent: Rep. Bohlinger

Staff Present: David Niss, Legislative Services Division
Jaelene Racicot, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 46, HB 144, & HB 129 (1-13-97)

Executive Action: HB 144

HEARING ON HB 46

Sponsor: REP. LARRY GRINDE, HD 94, introduced the bill. {Tape: 1; Side: A; Approx. Time Count: .3; Comments: None.}

Proponents: Susan Good, Montana Association of Life Underwriters & Heal Montana.
{Tape: 1; Side: A; Approx. Time Count: 1.6; Comments: None.}

{Tape: 2; Side: B; Approx. Time Count: 1.5; Comments: None.}

Claudia Clifford, State Auditor's Office. {Tape: 2; Side: B;
Approx. Time Count: 2.2; Comments: None.}

Opponents: None

Questions From Committee Members and Responses:

None

Closing by Sponsor: REP. BRUCE SIMON closed. {Tape: 2; Side: B;
Approx. Time Count: 2.8; Comments: None.}

HEARING ON HB 129

Sponsor: REP. LOREN SOFT, HD 12, introduced the bill. {Tape: 2;
Side: B; Approx. Time Count: 3.0; Comments: None.}

Proponents: Hank Hundson, Dept. of Public Health and Human
Services. {Tape: 2; Side: B; Approx. Time Count: 3.5; Comments:
None.}

Ann Gilkey, Dept. of Public Health and Human Services. {Tape: 2;
Side: B; Approx. Time Count: 3.9; Comments: Exhibit 4.}

Mary Alice Cook, Advocate for Children and Families. {Tape: 2;
Side: B; Approx. Time Count: 4.5; Comments: None.}

Opponents: None

Questions From Committee Members and Responses:

REP. DEB KOTTEL. {Tape: 2; Side: B; Approx. Time Count: 5.4;
Comments: Questioned Ann Gilkey.}

REP. BRUCE SIMON. {Tape: 2; Side: B; Approx. Time Count: 7.2;
Comments: Questioned Rep. Soft.}

REP. BRUCE SIMON. {Tape: 2; Side: B; Approx. Time Count: 14.8;
Comments: Questioned Ann Gilkey.}

REP. WES PROUSE. {Tape: 2; Side: B; Approx. Time Count: 18.9;
Comments: Questioned Hank Hudson.}

REP. BRAD MOLNAR. {Tape: 2; Side: B; Approx. Time Count: 21.8;
Comments: Questioned Hank Hudson.}

{Tape: 3; Side: A; Approx. Time Count: 0; Comments: Mr. Hudson
continues answering Rep. Molnar's question.}

REP. DEB KOTTEL. {Tape: 3; Side: A; Approx. Time Count: 2.2;
Comments: Questioned Ann Gilkey.}

REP. WES PROUSE. {Tape: 3; Side: A; Approx. Time Count: 6.8;
Comments: Questioned Mr. Hudson.}

REP. BRUCE SIMON. {Tape: 3; Side: A; Approx. Time Count: 10.3;
Comments: Questioned Hank Hudson.}

REP. LIZ SMITH. {Tape: 3; Side: A; Approx. Time Count: 13.3;
Comments: Questioned Hank Hudson.}

REP. BILL CAREY. {Tape: 3; Side: A; Approx. Time Count: 23.9;
Comments: Questioned Ann Gilkey.}

REP. WES PROUSE. {Tape: 3; Side: A; Approx. Time Count: 26.8;
Comments: Questioned Hank Hudson.}

CHAIRMAN DUANE GRIMES. {Tape: 3; Side: A; Approx. Time Count:
29.5; Comments: Questioned Hank Hudson.}

{Tape: 3; Side: B; Approx. Time Count: 0; Comments: CHAIRMAN
GRIMES continued questioning Hank Hudson.}

REP. BRAD MOLNAR. {Tape: 3; Side: B; Approx. Time Count: 1.4;
Comments: Questioned Hank Hudson.}

Closing by Sponsor: REP. LOREN SOFT closed. {Tape: 3; Side: B;
Approx. Time Count: 2.1; Comments: None.}

EXECUTIVE ACTION ON HB 144

Amendments: None

Motion/Vote: REP. CAROLYN SQUIRES moved do pass. REP. LIZ
SMITH seconded the motion. {Tape: 3; Side: B; Approx. Time
Count: 5.9; Comments: None.}

Vote: The motion carried. Vote 15-0

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON HUMAN SERVICES

Call to Order: By CHAIRMAN DUANE GRIMES, on February 14, 1997,
at 3:00 P.M., in ROOM 104.

ROLL CALL

Members Present:

Rep. Duane Grimes, Chairman (R)
Rep. Loren L. Soft, Vice Chairman (Majority) (R)
Rep. Carolyn M. Squires, Vice Chairman (Minority) (D)
Rep. Darrel Adams (R)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. John C. Bohlinger (R)
Rep. Bill Carey (D)
Rep. Deb Kottel (D)
Rep. Billie Krenzler (D)
Rep. Brad Molnar (R)
Rep. Wes Prouse (R)
Rep. Diane Sands (D)
Rep. Bruce T. Simon (R)
Rep. Liz Smith (R)

Members Excused: None

Members Absent: None

Staff Present: David Niss, Legislative Services Division
Jaelene Racicot, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 538 & HB 515 (2-12-97)
Executive Action: HB 128 TABLED 16-0
HB 129 DO PASS AS AMENDED 9-7
HB 333 DO PASS AS AMENDED 9-6
HB 485 TABLED
HB 538 DO PASS 15-1

HEARING ON HB 538

Opening Statement by Sponsor:

REP. BOB KEENAN, HD 65, introduced the bill. {Tape: 1; Side: A;
Approx. Time Count: 0.}

REP. MOLNAR. {Tape: 2; Side: B; Approx. Time Count: 16.8.}

Vote: A ROLL CALL VOTE WAS TAKEN. THE MOTION FAILED 6 - 10.
{Tape: 2; Side: B; Approx. Time Count: 18.5.}

EXECUTIVE ACTION ON HB 129

Motion: REP. SOFT MOVED HB 129 DO PASS. {Tape: 2; Side: B;
Approx. Time Count: 19.7.}

Discussion:

REP. SOFT. {Tape: 2; Side: B; Approx. Time Count: 19.8;
Comments: Explained the amendments.}

Motion: REP. SOFT MOVED THE SOFT AMENDMENTS. {Tape: 2; Side: B;
Approx. Time Count: 23.0.}

Vote: THE MOTION CARRIED UNANIMOUSLY. {Tape: 2; Side: B;
Approx. Time Count: 23.9.}

Motion: REP. SIMON MOVED THE SIMON AMENDMENT. {Tape: 2; Side:
B; Approx. Time Count: 24.1.}

Vote: THE MOTION CARRIED UNANIMOUSLY. {Tape: 2; Side: B; Approx.
Time Count: 24.7.}

Motion: REP. SOFT MOVED HB 129 DO PASS AS AMENDED. {Tape: 2;
Side: B; Approx. Time Count: 24.9.}

Discussion:

REP. SMITH. {Tape: 2; Side: B; Approx. Time Count: 25.4.}

REP. CAREY. {Tape: 2; Side: B; Approx. Time Count: 26.6.}

David Niss. {Tape: 2; Side: B; Approx. Time Count: 26.8.}

REP. MOLNAR. {Tape: 2; Side: B; Approx. Time Count: 27.3;
Comments: Questioned REP. SOFT.}

Motion: REP MOLNAR MOVED TO REMOVE SECTION 10 AS AMENDED. THE
MOTION FAILED. {Tape: 2; Side: B; Approx. Time Count: 28.2.}

Discussion:

REP. KOTTEL. {Tape: 2; Side: B; Approx. Time Count: 30.3;
Comments: REP. MOLNAR.}

REP. SOFT. {Tape: 2; Side: B; Approx. Time Count: 30.8;
Comments: REP. MOLNAR.}

REP. CAREY. {Tape: 2; Side: B; Approx. Time Count: 32.8.}

Vote: THE MOTION FAILED.

Discussion:

REP. MOLNAR. {Tape: 2; Side: B; Approx. Time Count: 33.3.}
REP. GRIMES. {Tape: 2; Side: B; Approx. Time Count: 40.9.}
REP. SOFT. {Tape: 3; Side: A; Approx. Time Count: 0.}
REP. SMITH. {Tape: 3; Side: A; Approx. Time Count: 3.3.}
REP. PROUSE. {Tape: 3; Side: A; Approx. Time Count: 5.4.}
REP. SOFT. {Tape: 3; Side: A; Approx. Time Count: 7.3.}

Motion/Vote: REP. SIMON MOVED TO TABLE HB 129. A ROLL CALL VOTE WAS TAKEN. THE MOTION FAILED 7 - 8. {Tape: 3; Side: A; Approx. Time Count: 8.2.}

Motion: REP. PROUSE MOVED TO STRICKEN SUBSECTION 11 FROM THE BILL. {Tape: 3; Side: A; Approx. Time Count: 9.6.}

Discussion:

REP. MOLNAR. {Tape: 3; Side: A; Approx. Time Count: 9.7;
Comments: Questioned REP. SOFT.}
REP. MOLNAR. {Tape: 3; Side: A; Approx. Time Count: 10.9;
Comments: Questioned REP. SOFT.}
REP. KOTTEL. {Tape: 3; Side: A; Approx. Time Count: 11.6.}

Vote: A ROLL CALL VOTE WAS TAKEN. THE MOTION FAILED 7 - 8. {Tape: 3; Side: A; Approx. Time Count: 13.1.}

Motion: REP. SOFT MOVED HB 129 DO PASS AS AMENDED. {Tape: 3; Side: A; Approx. Time Count: 13.7.}

Motion: REP. MOLNAR MOVED TO STRIKE SUB PARAGRAPH 7 (BOTTOM OF PAGE 3) FROM THE BILL. {Tape: 3; Side: A; Approx. Time Count: 13.9.}

Vote: THE MOTION FAILED. {Tape: 3; Side: A; Approx. Time Count: 15.0.}

Discussion:

REP. MOLNAR. {Tape: 3; Side: A; Approx. Time Count: 15.2.}
REP. GRIMES. {Tape: 3; Side: A; Approx. Time Count: 16.8;
Comments: Questioned REP. MOLNAR.}
REP. MOLNAR. {Tape: 3; Side: A; Approx. Time Count: 18.0.}

Vote: A ROLL CALL VOTE WAS TAKEN. THE MOTION CARRIED 9- 7.
{Tape: 3; Side: A; Approx. Time Count: 20.4.}

EXECUTIVE ACTION ON HB 485

Motion: REP. SQUIRES MOVED HB 485 DO NOT PASS. {Tape: 3; Side: A; Approx. Time Count: 21.9.}

Motion/Vote: REP. PROUSE MOVED A SUBSTITUTE MOTION TO TABLE HB 485. THE MOTION CARRIED. {Tape: 3; Side: A; Approx. Time Count: 22.1.}

EXECUTIVE ACTION ON HB 538

Motion: REP. SQUIRES MOVED HB 538 DO NOT PASS. {Tape: 3; Side: A; Approx. Time Count: 22.6.}

Motion: REP. BOHARSKI MOVED A SUBSTITUTE MOTION HB 538 DO PASS. {Tape: 3; Side: A; Approx. Time Count: 22.8.}

Discussion:

REP. SQUIRES. {Tape: 3; Side: A; Approx. Time Count: 23.7.}

REP. SIMON. {Tape: 3; Side: A; Approx. Time Count: 24.7.}

REP. ADAMS. {Tape: 3; Side: A; Approx. Time Count: 25.3.}

REP. BOHLINGER. {Tape: 3; Side: A; Approx. Time Count: 25.8.}

REP. GRIMES. {Tape: 3; Side: A; Approx. Time Count: 26.3.}

Vote: THE MOTION CARRIED 15-1. {Tape: 3; Side: A; Approx. Time Count: 27.0.}

REP. GRIMES explained to the committee regarding to resolutions. He said he had been asked by the Health Care Advisory Council to present the resolutions to the committee as committee bills. The committee would have two different resolutions. {Tape: 3; Side: A; Approx. Time Count: 27.4.}

Discussion:

REP. SMITH. {Tape: 3; Side: A; Approx. Time Count: 29.2.}

REP. GRIMES. {Tape: 3; Side: A; Approx. Time Count: 29.5.}

REP. SIMON. {Tape: 3; Side: A; Approx. Time Count: 30.2.}

Motion/Vote: REP. GRIMES MOVED TO MAKE THE TWO RESOLUTIONS INTO COMMITTEE BILL. THE MOTION CARRIED 15 - 0. {Tape: 3; Side: A; Approx. Time Count: 31.0.}

COMMITTEE--SENATE PUBLIC HEALTH, W & S

CHAIRMAN--STEVE BENEDICT

SECRETARY-KAROLYN SIMPSON/440

NORMAL SCHEDULE => SITE: ROOM 410

DAYS: M,W,F

TIME: 3:00 P.M.

- BILL NO-- REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE ----- REREFERRED ---- DATE READ

HB0027	SIMON, BRUCE	PROHIBIT HEALTH CARE PROVIDER GAG CLAUSES IN MCO PROVIDER CONTRACTS	2/11	3/24	CONCUR AS AMENDED 3/24	VOTE: UNANIMOUS	3/26
HB0033	KASTEN, BETTY LOU	REPEAL STATE MEDICAL FACILITY PLAN PROVISIONS	1/16	1/27	CONCUR	1/27 VOTE:	1/27
HB0046	GRINDE, LARRY HAL	REQUIRE CERTAIN HEALTH MAINTENANCE ORGS TO OFFER POINT-OF-SERVICE OPTION	2/06	3/10	CONCUR	3/10 VOTE: 8-1	3/12
HB0053	BOHLINGER, JOHN	CHANGE HANDICAP TO PERSON WITH DISABILITIES	1/25	2/03	CONCUR AS AMENDED 2/12	VOTE:	2/14
HB0059	JOHNSON, ROYAL	SETTING UNIFORM STATE AMBIENT SULFUR DIOXIDE STANDARDS	1/25			VOTE: NATURAL RESOURCES	
HB0066	COCCHIARELLA, VICKI	ESTABLISH CHILD CARE IMPROVEMENT GRANT PROGRAM AND SET FORTH PRIORITIES	1/28	2/07	CONCUR	2/7 VOTE:	2/11
HB0107	KASTEN, BETTY LOU	REVISE LONG-TERM CARE INSURANCE PREMIUM DEDUCTION	1/25	2/05	CONCUR	2/12 VOTE:	2/14
HB0108	SWANSON, EMILY	GENERALLY REVISE CERTIFICATE OF NEED STATUTES	2/03	2/07	CONCUR	2/12 VOTE:	2/14
HB0129	SOFT, LOREN	REVISE CHILD PROTECTIVE SERVICES	3/03	3/17	CONCUR	3/21 VOTE:	3/24
HB0144	SIMON, BRUCE	REDUCE ST. AUDITOR AUTHORITY OVER SMALL EMPLOYER HEALTH REINSURANCE PROGRAM	1/20	1/29	CONCUR	1/29 VOTE:	1/30
HB0146	JOHNSON, ROYAL	EXEMPTING TITLE 53 WELFARE PROGRAM PARTICIPANTS FROM WAGE & HOUR LAWS	3/03	3/21	CONCUR AS AMENDED 3/24	VOTE: 5-4	3/26

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE, & SAFETY

Call to Order: By CHAIRMAN STEVE BENEDICT, on March 17, 1997, at 3:07 PM, in Room 410.

ROLL CALL

Members Present:

Sen. Steve Benedict, Chairman (R)
Sen. James H. "Jim" Burnett, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Chris Christiaens (D)
Sen. Bob DePratu (R)
Sen. Dorothy Eck (D)
Sen. Sharon Estrada (R)
Sen. Eve Franklin (D)
Sen. Fred Thomas (R)

Members Excused: None

Members Absent: None

Staff Present: Susan Fox, Legislative Services Division
Karolyn Simpson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 333, HB 538, HB 129, 3/7/97
Executive Action: SJR 16, HB 412, HB 333, HB 538

HEARING ON HB 333

Sponsor: REP. LOREN SOFT, HD 12, Billings

Proponents: John Melcher, Attorney, Department of Health
Christina Litchfield, Msla City-County Health Dept.
Steve Yeakel, MT Council Maternal and Child Health
Mike McGrath, L & C County Attorney
Betty Waddell, MT Assn. Churches
Robert Runkel, Office Public Instruction
Russell Hill, MT Trial Lawyers Assn.

Opponents: None

{Tape: 1; Side: B; Approx. Time Count: 3:51 PM}

HEARING ON HB 129

Sponsor: REP. LOREN SOFT, HD 12, Billings

Proponents: Hank Hudson, Department of Health
Gloria Hermanson, MT Psychological Assn.
Bob Torres, MT Chapter Social Workers
Betty Waddell, MT Assn. Churches
Allen Cranford, Christian Science Church of MT

Opponents: None

Opening Statement by Sponsor:

REP. LOREN SOFT, HD 12, Billings, said HB 129 clarifies the definition of abuse and neglect, clarifies emotional abuse, clarifies procedures for notifying parents of an investigation. Section 1, subsection 2: clarifies a court may not order supervised visitation in divorce cases where the Department is not involved because no child issues are involved. Page 3, section 3: adult who resides in the same home where a child resides, such as step parent or other live-in adult who may be charged with abuse. Page 3, line 28, subsection 7: emotional abuse must be evidenced by identifiable and substantial impairment of the child. This holds the Department and the workers more accountable to proving emotional abuse. Page 4, line 10: harm to a child is not always direct and open, such as a child exposed to sexual abuse in the home by an older sibling, drugs, or pornography. This tells parents they are accountable for their children's well-being and safety. Page 4, line 25-30: clarifies to the Department of Health what types of injuries that constitute abuse. There is always that fine line between spanking and abuse. In Montana it is still legal to spank a child and it is not described as abuse in the statutes. Gross abuse is the issue. Page 8, line 8-24: procedures the Department must go through in a child abuse investigation. Page 8, line 26: interviewing the parent or guardian regarding the abuse or neglect of the child. Page 10: confidentiality of records, including adoption agencies who perform home investigations. Page 9: how records are handled, the destruction of unfounded allegations of abuse or neglect. This is controversial and is posing a problem for police and sheriff departments. Page 12-14: definition of criteria for termination of parental rights. Page 15: provides for approving a family member for child care because it is important for children to stay within the family, if at all possible, but is only applicable when the child is placed by the Department.

Proponents' Testimony:

Hank Hudson, Administrator, Child and Family Services, Department of Health, said this bill clarifies the definitions and reduces the confusion of what constitutes physical and emotional abuse, to help the public, the courts, and the Department to understand the limitations. The responsibility for the well-being of children is expanded to include other adults living in the home of the child because many of their clients live with someone to whom they are not married. Referring to page 8, line 22, "it appears" has been replaced with "reasonable cause to suspect," which is a better description of criteria for abuse or neglect. They have expanded the privilege to release confidential information in adoption proceedings to help reduce the time children spend in foster care. A lot of the changes are a result of legislators who have held the Department's feet to the fire to review and change the policies, and these changes they were convinced to make must be reflected in the codes.

Gloria Hermanson, Montana Psychological Association, said they support HB 129.

Bob Torres, Montana Chapter of National Association of Social Workers, said they support HB 129 and clarifying the criteria for what social workers are supposed to do. Social workers are involved in defining that physical abuse goes beyond spanking.

Betty Waddell, Montana Association of Churches, said they support HB 129 because children must be protected against all forms of neglect, cruelty and exploitation and they support legislation that will protect children. The number of reported child abuse cases probably amounts to only one-fifth of actual child abuse incidences.

Allen Cranford, Christian Science Churches in Montana, said he was not speaking for or against HB 129, but instead asking the committee to consider an amendment that would restore the legal protections to the practice of their religion in the care of their children. (EXHIBIT 9)

Opponents' Testimony: NoneQuestions From Committee Members and Responses:

SENATOR CHRISTIAENS asked about emotional abuse and what is the statute of limitations.

Ann Gilkey, Department of Health, said the statute of limitations traditionally applies to criminal prosecutions. These sections of law are in the civil code, which means people are not prosecuted for emotional abuse under these statutes. Under criminal codes it may be called child endangerment, but not being a prosecutor is not sure of the term, but is not aware of anyone being prosecuted for emotional abuse. In the civil arena, the parent is put on a treatment plan to become a better parent so they are not abusing the child, emotionally or physically.

SENATOR CHRISTIAENS asked if the Department could do the same thing with emotional abuse.

Ann Gilkey said yes, and under existing law there is mental injury (page 4, lines 22-23) but now changed to emotional abuse and making the Department more accountable to prove the identifiable impairment.

SENATOR CHRISTIAENS said he has worked in adult corrections and, looking at SB 48, which changes the youth correction act, and under HB 129, it seems possible family assessments could be done.

Ann Gilkey said that is true to a degree but juvenile corrections is another area of law. If the family assessment finds a parent has emotionally abused the child from the time of birth until they end up in an assessment center, she hopes they would be working with the parents and not just blaming the child.

SENATOR CHRISTIAENS referred to page 9, saying records are destroyed after 30 days, and under SB 48, if a child does not get into more trouble, at age 18 those records are destroyed. Yet, testimony says the majority of those records are not, then asked how will this destruction be accomplished.

Ann Gilkey said a bill in the last legislature required the Department to destroy all records of unfounded investigations after 20 days. The new electronic data system purges unfounded records every 30 days.

SENATOR CHRISTIAENS asked if the Christian Science amendment is adopted, how many other places in law will need to be changed.

Ann Gilkey said a bill in the 1993 legislature dealt with that portion of the law and this bill is a compromise, but the Christian Scientists still didn't like it even though it was toned down. If there is not abuse or neglect, but a child is at eminent risk of dying because lack of traditional medical treatment, the judge could order traditional treatment.

SENATOR JIM BURNETT asked when a case worker asks for a TIA (Temporary Investigative Authority), are they under oath?

Ann Gilkey said they sign a report to the court, not officially under oath, but the County Attorney submits an affidavit with it.

SENATOR BURNETT said he has documentation where a case worker admitted he didn't know what he was doing, and had assumed but did not have facts.

Ann Gilkey said in this bill, they tried to address these concerns and be more accountable by narrowing the definitions.

SENATOR BURNETT asked what happens when a case worker goes to court and doesn't tell the truth.

Ann Gilkey said if they lied in court they are guilty of perjury.

SENATOR BURNETT said many of these families are destitute and can't afford to go to court, while the Department has unlimited resources of the County Attorney that doesn't cost them anything. He said there is no equal footing.

{Tape: 2; Side: A; Approx. Time Count: 4:36 PM}

Closing by Sponsor:

REP. LOREN SOFT said he was aware there had been problems and, before agreeing to carry this bill, he wanted information about how the field workers are supervised, making sure training is provided, and the Department supervises workers closely. Since 1993 through 1994, 11 staff members were terminated for improper functioning of their duties.

Close hearing at 4:37 PM, reconvene at 4:49 PM.

HEARING ON HB 538

Sponsor: REP. BOB KEENAN, HD 75, Big Fork

Proponents: Susan Good, HEAL MT

REP. BRUCE SIMON, HD 18, Billings

Nancy Ellery, Department of Health

Opponents: None

Opening Statement by Sponsor:

REP. BOB KEENAN, HD 75, Big Fork, said HB 538 creates a pilot program to establish medical savings accounts for AFDC, now TANF Medicaid eligible children and adults. It is a voluntary program and will involve 1,000 to 5,000 people who will be randomly selected for participation on a random state-wide basis. This will take the third payer out of the process and give the ownership of health care funds to Medicaid participants. Using Federal and State funds, up to \$1,700.00 would be provided for each adult in a Medical Savings Account (MSA) and \$900.00 per child. Then, the State will buy an insurance policy which will be used when that MSA money is used up. The insurance will cost \$167.83 per month for an adult, and \$87.58 for each child. Projected state-wide savings will be \$10.5 million per year. The fiscal note was of concern in the House because there is a possibility that parents could avoid getting medical care for their children, hoping to save money. The incentive is, 90 days after they go off Medicaid, they get to keep 20% of the balance in their account.

Proponents' Testimony:

Susan Good, HEAL Montana, said they had envisioned this program in 1994. People going off Medicaid would be able to have a good training ground, and good incentive to become more prudent consumers of medical care. This would allow TANF recipients to be

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE, & SAFETY

Call to Order: By SENATOR BOB DePRATU, on March 21, 1997, at
3:17 PM, in Room 410.

ROLL CALL

Members Present:

Sen. Steve Benedict, Chairman (R)
Sen. James H. "Jim" Burnett, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Chris Christiaens (D)
Sen. Bob DePratu (R)
Sen. Dorothy Eck (D)
Sen. Sharon Estrada (R)
Sen. Eve Franklin (D)
Sen. Fred Thomas (R)

Members Excused: None

Members Absent: None

Staff Present: Susan Fox, Legislative Services Division
Karlolyn Simpson, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 386, HB 146, 3/7/97
Executive Action: HB 502, HB 333, HB 129, HB 558

HEARING ON HB 386

Sponsor: REP. BRAD MOLNAR, HD 22, Laurel

Proponents: Charles Lorensen, self
Helen Barbara Lange, self
Verdell Jackson, self
Betty Asplin, Family for Families
Kenneth Haugen, Family for Families
Glen Hage, self
Casey George, self
Frank Fitzgerald, self

Opponents: Hank Hudson, Department of Health
Jean Whittinghill, Court Assessment Program
Mary Alice Cook, Lobbyist for Children & Families

Christina Litchfield said she had spoken to REP. SOFT and he had agreed to the amendments.

Vote: The DO PASS motion for the AMENDMENTS to HB 333 CARRIED UNANIMOUSLY.

Motion/Vote: SENATOR CHRISTIAENS moved HB 333 BE CONCURRED IN AS AMENDED. The motion CARRIED UNANIMOUSLY.

SENATOR FRED THOMAS will carry the bill.

EXECUTIVE ACTION ON HB 129

Motion: SENATOR CHRIS CHRISTIAENS moved HB 129 BE CONCURRED IN.

Discussion: CHAIRMAN BENEDICT said the Christian Science amendment was not requested by any member of the Legislature and asked if the committee had any desire to discuss it.

SENATOR EVE FRANKLIN said she didn't work on it, and if any work will be done on it, she will have to do it on the floor.

Vote: The BE CONCURRED IN motion for HB 129 CARRIED UNANIMOUSLY.

SENATOR JIM BURNETT will carry the bill.

EXECUTIVE ACTION ON HB 558

Amendments: CHAIRMAN BENEDICT said there are amendments to the bill. They were requested by REP. SMITH, and are revised.

SENATOR CHRISTIAENS said the Department of Health had some amendments.

Motion: SENATOR FRED THOMAS moved HB 558 BE CONCURRED IN.

Motion: SENATOR CHRISTIAENS moved the Department of Health AMENDMENTS (HB558-5.AMD) to HB 558 DO PASS. (EXHIBIT 10)

Discussion: CHAIRMAN BENEDICT said these amendments conflict with one another, so would have to make a decision on these amendments or REP. SMITH's amendments.

Motion/Vote: SENATOR SHARON ESTRADA made a substitute motion to use REP. SMITH'S amendments (HB055801.asf) first. (EXHIBIT 11) The motion CARRIED with SENATORS BAER, CHRISTIAENS, FRANKLIN and ECK voting NO.

Motion/Vote: SENATOR ESTRADA moved REP. SMITH'S AMENDMENTS to HB 558 DO PASS.